IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.856 OF 2006

Hariharprasad J.Chaudhary ...Appellant

vs.

Municipal Corporation of
Greater Mumbai and another ...Respondents

Mr.G.S.Godbole i/b Mr.Vinod Mishra for the Appellant
Ms Geeta Joglekar for the Respondent-B.M.C.

CORAM: A.S.OKA,J.
DATE : MARCH 23,2007.

P.C.:

1. Admit. The Advocate for the Respondent waives service. Taken up for hearing forthwith.

2. The Appellant is the original Plaintiff who has taken exception to the Judgment and Order dated 30th November 2006 passed by Trial Court by which a Notice of Motion taken out by the Appellant for temporary injunction has been dismissed.

3. The Appellant filed a suit for injunction restraining the Respondent-Corporation from disturbing the alleged possession of the Appellant over the suit premises described in prayer (a) of the plaint. There was ad-interim relief granted in favour of the Appellant-Plaintiff by which both the parties were directed to maintain status quo in respect of the suit structure. In the impugned order, the learned Judge has observed that the Appellant has not set out the city survey

number of the land on which the suit structure is situated. He has also noted that in Exh.B annexed to the plaint, the suit structure has been shown to have been located on the land bearing CTS No.652 (Part) , Survey No. 258 Hissa No.3 of Village Malad, Taluka Borivali, Mumbai Suburban District. In paragraph 5 of the impugned order, the learned Judge has referred to the action papers produced across the bar by the Advocate for the Respondent. According to the learned Judge, the said action papers show that the suit structure is not located on CTS No.652 but is located on a different survey number which is falling in reservation for a recreation ground.

4. After having heard the learned Advocates for the parties, I am of the view that the approach of the learned Judge is erroneous. There was no reply filed to the Notice of Motion by the Respondent-Corporation contending that the suit structure was situated on a particular city survey number which is under reservation. There was no documentary evidence produced on record by the Respondent showing that the suit structure was situated on a plot which is reserved for a recreation ground. Only on the basis of the file containing the action papers, the learned Trial Judge has recorded the finding in paragraph 5 of the impugned order. As a reply was not filed by the Respondent raising the dispute about the location of the suit structure, there was no opportunity to

the Appellant to meet the contention raised by the Respondent only on the basis of the action papers which were shown across the bar to the learned Trial Judge during the course of the hearing of the Notice of Motion.

5. Considering the aforesaid error committed by the learned Trial Judge, the impugned order deserves to be quashed and set aside. Considering the nature of the controversy involved, an opportunity deserves to be granted to the Respondent-Corporation to file a reply to the Notice of Motion. There will not be any prejudice to the Appellant as ad-interim relief will be continued till the disposal of the Notice of Motion.

6. The learned Advocate for the Appellant pointed out that a Chamber Summons has been taken out by the Appellant for amendment of the plaint. The learned Judge will have to decide the said Chamber Summons expeditiously.

7. Hence, Appeal is disposed of by passing the following order :

i) Impugned Judgment and Order dated 30th November 2006 is quashed and set aside and Notice of Motion No.1610 of 2006 is restored to the file of the Trial Court.

ii) It will be open for the Respondent to file a reply to the said Notice of Motion on or before 27th April 2007.

iii) The said Notice of Motion shall be disposed of expeditiously. Till the disposal of the Notice of Motion, both the parties will maintain status quo in respect of the suit structure.

iv) The learned Trial Judge will also dispose of the Chamber Summons taken out by the Appellant for amendment of the plaint as expeditiously as possible.

v) All contentions of the parties on merits of the suit as well as Notice of Motion are expressly kept open.

vi) Appeal is partly allowed in above terms with no order as to costs.

JUDGE